

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:04CV230-03-MU

DAVID HENRY MILLER,)
)
Plaintiff,)
)
v.)
)
CURTIS STURGILL, et. al.)
)
Defendants.)

)

ORDER

THIS MATTER comes before the Court on Plaintiff's "Motion to Dismiss" [Documents No. 30 and 32]. For the reasons stated in this Order, Plaintiff's motion is granted.

Plaintiff claims that he seeks this relief because he has settled with the Defendants and has been transferred to another facility. Plaintiff contends that since he is out of harms way from the Defendants, he has decided to "drop" his case against them.¹ The Defendants do not oppose this motion even though they have already filed an Answer and a Motion to Dismiss in this case. Defendants clarify that Plaintiff was transferred from Marion to Lanesboro in order to resolve a central monitoring conflict between Plaintiff and another inmate confined at Marion.

Rule 41 of the Federal Rule of Civil Procedure governs voluntary dismissals. That Rule provides that Plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal at any time before Defendants file an answer or a motion to dismiss or by a stipulation of dismissal signed by all parties. Plaintiff may also seek to voluntarily dismiss an action after an answer or motion for summary judgment has been filed by Order of the Court

¹ Plaintiff also claims that this Court must be on the side of the Defendants because the Court denies all of his motions.

Rule 41(a)(2) of the Federal Rules of Civil Procedure applies to this case since an answer and a motion to dismiss had been filed prior to Plaintiff's Motion to Dismiss. Rule 41(a)(2) allows for a voluntary dismissal only by Court Order. Here, Defendants have clearly stated that they do not oppose Plaintiff's Motion to Dismiss. A plaintiff's Rule 41(a)(2) motion to dismiss should be granted if not opposed or if no relevant objection is interposed. See Gentry v. Township of Gloucester, 736 F.Supp. 1322, 1326 (D.N.J. 1990).

For these reasons, the Court will grant Plaintiff's Motion for a Voluntary Dismissal.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss is Granted. This case is Dismissed.

SO ORDERED.

Signed: February 9, 2006



Graham C. Mullen
United States District Judge

